

Introduction to Economic, Social, and Cultural Rights

Dr. Mallika Ramachandran &

Dr. Deepa Kansra

Dr. Ramachandran is a Freelance Editor and Researcher. She is Guest Faculty at the Centre for Post Graduate Legal Studies, Teri School of Advanced Studies, Delhi.

Dr. Kansra is Assistant Professor at the Human Rights Studies Programme, School of International Studies, Jawaharlal Nehru University, Delhi.

The Topic

Covers a basic understanding of economic, social and cultural Rights. The focus is on the International Covenant on Economic, Social, Cultural Rights [ICESCR].

Economic, social, and cultural human rights are important to people around the world. For that reason the ICESCR is an important document to study in order to understand the work being done by states towards the rights.

The slides briefly cover the specific rights provided under the International Covenant, state responsibility under ICESCR, and the important concepts related to ESC rights.

The Optional Protocol and few other aspects will be covered separately.

Points for Discussion

1. About ESC rights
2. The International Covenant on Economic, Social, Cultural Rights [ICESCR]
3. State responsibility under ICESCR
4. Important Concepts
5. Concept of Progressive Realization
6. Concept of Minimum Core
7. Committee under ICESCR
8. Implementation of ICESCR
9. Committee on Specific Rights
10. Committee on Right to Food
11. Debates
12. Important Questions
13. Final points
14. Suggested Readings

About ESC Rights

- ▶ ESC rights are the rights provided under documents including the Universal Declaration of Human Rights [UDHR], International Covenant on Economic Social and Cultural Rights and several national constitutions.
- ▶ The rights include the essentials such as food, shelter, education, work, social security, culture .
- ▶ ESC rights are said to include duties for the state related to;
 - a. use of resources- budgetary allocations
 - b. making provision for basic essentials to the people
- ▶ United Nations and states have created mechanisms to redress and provide remedies for violations of ESC rights.

The International Covenant on Economic, Social, Cultural Rights [ICESCR]

ICESCR basics: Adopted: 16 December 1966; Came into force: 3 January 1976; No of ratifications (as in April 2020): 170 states parties

The Preamble

INHERENT DIGNITY- Invoking the UN Charter, considers that '*the inherent dignity and ... equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace*'; the rights in the covenant '*derive from the inherent dignity of the human person*';

In line with the UDHR, it recognizes that 'the **ideal** of free human beings enjoying freedom from fear and want can **only be achieved** if **conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights**';

Recognizes **both, obligation of the states** 'to promote universal respect for, and observance of, human rights and freedoms' **and responsibility of individuals** 'to strive for the promotion and observance of the rights recognized'

ICESCR [Cont.]

STATE RESPONSIBILITY

Article 2(1), each state party undertakes to *take steps* individually and through *international assistance and cooperation*, especially economic and technical, to the maximum of its *available resources*, to *progressively* fulfil the rights in the Covenant.

SPECIFIC RIGHTS

- ▶ Article 6 (right to **work**);
- ▶ Article 7 (**just and favorable conditions** of work);
- ▶ Article 8 (to form and join **trade unions** and to **strike** in conformity with law)
- ▶ Article 9 (**social security**); Article 10 (protection for families, etc.)
- ▶ Article 11 (adequate **standard of living** including **food, clothing, and housing**);
- ▶ Article 12 (highest attainable standard of **physical and mental health**);
- ▶ Article 13 (**education**)
- ▶ Article 15 (**culture**)

State Responsibility under ICESCR

The primary duty-bearer under the ICESCR is the state.

Duty of State to provide for a minimum core of the rights.

All States to take Individual and collective responsibilities

Duty to respect, protect and fulfil the enjoyment of rights.

FULFILL- requires state to provide directly or by providing assistance (legislative, administrative, budgetary, judicial, or other measures).

RESPECT – requires state to refrain from interfering directly or indirectly from enjoyment of the rights.

PROTECT- requires state to prevent third parties from interfering with enjoyment of right.

Important Concepts

1. **ESC Rights:** 'human rights relating to the workplace, social security, family life, participation in cultural life, and access to housing, food, water, health care and education' (OHCHR 2008)
2. **Progressive realization:** implies 'moving as expeditiously and effectively as possible' towards fulfilment of obligations' and does not imply indefinite postponement
3. **Steps: all appropriate means;** legislation where required; also includes judicial remedies 'maximum available resources': combines ideal (maximum) with real (available) (Robert Robertson)
4. **'minimum core':** minimum essential level of each right
5. **respect-protect-fulfil:** non-interference; protection against third-party interference; and positive action

Concept of Progressive Realization

Concept of progressive realization requires assessment of the performance of states.

The concept creates a duty on state to take all appropriate steps or reasonable measures towards the rights.

The steps taken by states should be concrete and targeted . [Committee under ICESCR].

Resource constraints have no effect on the duty.

There are some rights which require immediate attention and fulfilment.

The concept does not imply indefinite postponement.

Concept of Minimum Core

- ▶ The concept seeks to '**establish a minimum legal content**' for economic, social, and cultural rights, otherwise seen as 'notoriously indeterminate' [Katherine Young]
- ▶ 'a minimum core obligation to ensure the satisfaction of, at the very least, **minimum essential levels of each of the rights** is incumbent upon every State party.' (General Comment no. 3)
- ▶ The principle of minimum core requires the state to do everything possible to optimize the basic right of survival of all the destitute and disadvantaged in the society...[Fredman]

Concept of Minimum Core [Cont.]

- ▶ Priority should be given to the need to assure to everyone the satisfaction of **subsistence requirements** as well as the provision of essential services, 'regardless of the level of economic development'. [Limburg Principles].
- ▶ 'for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available **resources it must demonstrate that every effort** has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations'. [General Comment no. 3]

ICESCR [Cont.] Committee under ICESCR

Established in 1986
(earlier, there were
working groups at the
ECOSOC)

FUNCTIONS-

Issues **general comments**
defining the content of
rights and obligations of
parties

- Reviews **country reports** submitted by state parties, and issues (non-binding) recommendations

- Considers **individual communications** under the Optional Protocol to the ICESCR

- Can receive and consider **inter-state communications** under the ICESCR
- Can undertake an **inquiry** under the Optional Protocol

Committee has considerable expertise in dealing with substantive issues

Committee has facilitated states in implementing the obligations under ICESCR.

The reporting and complaints mechanism has been used for this purpose.

Implementation of ICESCR

Reports are the only mechanism for **monitoring the implementation of ESC rights** by states parties provided in the ICESCR (other mechanisms are provided in the Optional Protocol to ICESCR).

*Such reports must specify inter alia,

Framework law, policy and strategies adopted for each ICESCR right;

Mechanisms in place to **monitor progress of realisation** of ICESCR rights;

*Such reports must specify inter alia,

Incorporation of ICESCR rights in the domestic legal order;

Available judicial and other remedies, as well as disaggregated comparative statistical data on the enjoyment of each ICESCR right [CESCR Guidelines].

In considering reports, the CESCR sets out positive aspects; factors and **difficulties affecting** implementation of the covenant; principal subjects of concern; and suggestions and recommendations.

While not binding, the recommendations are seen to have **influenced discussion at the national level, legislative process**, as well as policy and administrative practice

Under the Optional Protocol, the Committee admits complaints from individuals against violations committed by State. Over the years there has been an increase in the number of complaints before the Committee.

Committee on Specific Rights

- ▶ A few areas the Committee has contributed towards;
 - **Right to social security**- it defined the minimum obligations of the State [2018].
 - **Right to health**- committee observed that right to health includes the right to make free and informed decisions concerning medical treatment.
 - Principles of **sustainability and future generations**.
 - Right to **Sexual and Reproductive Health under** General Comment No. 22
 - **Right to Education under** General Comment No. 13
 - **Right to Adequate Housing** under General Comment No. 7

Committee on Right to Food

- ▶ The ESCR Committee affirms that the right to adequate food is indivisibly linked to the ***inherent dignity of the human person*** and is indispensable for the fulfilment of other human rights.
- ▶ The right to adequate food is realized when every man, woman and child, alone or in community with others, have ***physical and economic access*** at all times to adequate food or means for its procurement.
- ▶ The Committee considers that the core content of the right to adequate food implies:
 - a. The availability of food in a ***quantity and quality sufficient to satisfy*** the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
 - b. The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

Committee on Right to food [Cont.]

Also,

- a. The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the **obligations to respect**, to **protect and to fulfil**.
- b. All members of society - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have **responsibilities in the realization of the right to adequate food**.
- c. Violations of the right to food can occur through the **direct action of States** or other entities.
- d. Any person or group who is a victim of a violation of the right to adequate food should have **access to effective judicial or other appropriate remedies** at both national and international levels.

[General Comment No. 12, 1999]

Debates

- ▶ **ESC rights and Civil- Political Rights** - there are several ways in which civil and political rights have traditionally been distinguished from socio-economic rights: the **different ideologies** underpinning each kind of rights; their differing **subject matter**; the **differing obligations** they give rise to; their resource implications; and whether or not they are justiciable. [Sandra Fredman].
- ▶ **Non-justiciable**- Most states have discussed on the non-justiciability of ESC rights. It is often argued that these **rights lack clarity** which makes them difficult to enforce. It is also argued that the nature of these rights makes them unenforceable as also lack of training on the part of the judiciary to handle such cases. Resource constraints are also a consideration. ESC rights are **also seen as complex**.
- ▶ **Minimum Core**- Defining a **minimum core of ESC rights is a complex task**. E.g. in case of right to housing, the minimum core can only be defined by looking at conditions of unemployment, availability of land, and circumstances of the country. [South African Constitutional court].

Important Questions

- ▶ To what extent the economic capacity of states influences their work towards ESC human rights?
- ▶ What is the role and involvement of corporations and individuals in the realization of ESC rights?
- ▶ What are the non-economic challenges to ESC rights?
- ▶ What is the role of the international community towards ensuring fulfilment of ESC rights?
- ▶ How to assess if resources are being used to the maximum for ESC rights ?
- ▶ As all human rights are equally important in ensuring a life with dignity, and ESC rights seek to ensure the basic necessities for even survival, is the distinction sought to be drawn between CPR and ESCR valid?

Final Points

1. ESC rights are ***interdependent and interrelated*** to civil and political rights. [See Preamble of ICCPR & ICESCR].
2. ***Principle of non-discrimination*** is the underlying feature of all human rights , including ESC rights.
3. ESC rights come with a duty for states to take ***appropriate steps***
4. ESC rights obligate the State to protect the rights from ***non-state parties***.
5. ICESCR gives importance to ***international cooperation and assistance***.
6. The Optional protocol to ICESCR – allows individuals to ***file a complaint*** with the Committee under ICESCR, in case of violations of ESC rights by the states.
7. It must be noted that ***all rights*** have both ***'positive' and 'negative' dimensions***, that is requiring action, or simply requiring non-interference.

Suggested Readings

- ▶ Barbara Stark, 'The International Covenant on Economic, Social and Cultural Rights', <http://ssrn.com/abstract=1285012>
- ▶ Sandra Fredman, *Comparative Human Rights Law*, OUP [2018].
- ▶ OHCHR Handbook on Economic, Social and Cultural Rights for National Human Rights Institutions, <https://www.ohchr.org/Documents/Publications/training12en.pdf>